REMARKS

Summary of the Restriction Requirement

In the restriction requirement, the Office Action divides the pending claims (i.e., claims 8-10) into two groups. Specifically, the Office Action sets forth a restriction requirement between Group I (claims 8-10), directed to a metal-containing ribonucleotide protein of SEQ ID NO. 3, and methods of making and using thereof; and Group II (claims 8-10), drawn to a metal-containing ribonucleotide protein of SEQ ID NO. 4, and methods of making and using thereof.

Election with Traverse

Applicants hereby elect, with traverse, the claims of Group I for examination. In this regard, Applicants respectfully submit that the claims of Group II should be examined with the claims of Group I for the reasons set forth below.

Discussion of Restriction Requirement

The Office clearly fails to satisfy the requirements for a proper restriction requirement. There are two criteria for a proper requirement for restriction between patentably distinct inventions: (i) the inventions must be independent or distinct as claimed, and (ii) there must be a serious burden on the examiner if restriction is not required. M.P.E.P. § 803. Consequently, as set forth in M.P.E.P. § 803, "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, *even though it includes claims to distinct or independent inventions*" (emphasis added). As such, both of these criteria must be met for a restriction requirement to be proper. The Office has failed to establish that examination of all of the claims would constitute a serious burden on the examiner if restriction were not required. Indeed, the Office Action does not so much as even allege that there would be undue burden if restriction would not be required.

Since there would be no "serious burden" on the Examiner to search and examine the claims of Groups I and II together, the restriction requirement is not proper. As such, Applicants respectfully request the withdrawal of the restriction requirement and consideration of the claims of Group II, in addition to those of elected Group I.

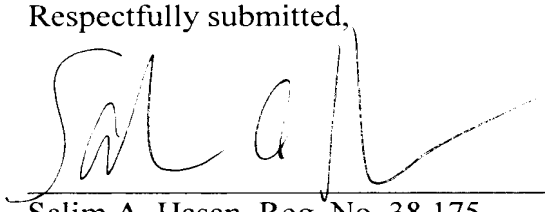
The Amendments to the Claims

The Office Action has renumbered previously submitted claims 12-14 as claims 8-10. The pending claims are directed to metal containing ribonucleotide polypeptides (claim 8), as well as a process (claim 9) and use (claim 10) thereof. Applicants have adopted the Examiner's suggestion and changed the dependency of claims 9 and 10 so that they now correctly depend from claim 8. No new matter has been added by way of these amendments. Separate documents setting forth (a) the precise changes to the claims, and (b) a complete set of the pending claims, are attached hereto.

Conclusion

The application is considered to be in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Kiesewetter et al.

Application No. 09/646,651

Filed: January 16, 2001

Art Unit: 1635

Examiner: J. Schultz

For: METAL-CONTAINING RIBONUCLEOTIDE POLYPEPTIDES

AMENDMENTS TO CLAIMS
MADE IN RESPONSE TO OFFICE ACTION DATED SEPTEMBER 19, 2002

Amendments to existing claims:

9. (Amended) A process for producing a metal-containing ribonucleotide protein (RPN) according to claim [1] 8, characterized in that leucocytes or inflammation tissue is homogenized or leucocytes are cultivated and the resulting RNP is recovered from the homogenates or from the supernatant of the culture solution by standard methods.

10. (Amended) A use of the metal-containing ribonucleotide protein (RPN) according to claim [1] 8 and/or molecular-biological equivalent structures and/or fragments and/or derivatives for producing a medicament for specifically influencing angiogenesis.